

Claim 2. (Amended) The DNA fragment of claim 1 which is a cis-element containing the core sequence of SEQ ID NO:1 in the sequence of SEQ ID NO: 2 or a nucleotide sequence obtained by deletion, substitution and/or addition of one or more bases in a part of the sequence of SEQ ID NO: 2 other than the core sequence of SEQ ID NO: 1, whereby expression of a gene placed downstream of said DNA fragment is repressed in the presence of light compared with expression in the dark.

Claim 3. (Amended) An isolated DNA fragment containing the sequence of SEQ ID NO: 1 as a core sequence and a constitutive promoter in the sequence of SEQ ID NO:3, whereby expression of a gene placed downstream of said sequence of SEQ ID NO:3 is repressed in the presence of light compared with the expression in the dark.

Claim 4. (Amended) An isolated promoter containing the nucleotide sequence of SEQ ID NO: 1 as a core sequence in the upstream of the promoter, whereby expression of a gene placed downstream of said promoter is promoted in the dark but repressed in the presence of light.

Claim 5. (Amended) The promoter of claim 4 containing the core sequence of SEQ ID NO: 1 in the sequence of SEQ ID NO: 2 or a nucleotide sequence obtained by deletion, substitution and/or addition of one or more bases in a part of the sequence of SEQ ID NO: 2 other than the core sequence of SEQ ID NO: 1, whereby expression of a gene placed downstream of said promoter is promoted in the dark but repressed in the presence of light.

*C1 could*  
Claim 6. (Amended) An isolated promoter comprising the sequence of SEQ ID NO:3, whereby expression of a gene placed downstream of said sequence of SEQ ID NO:3 is promoted in the dark but repressed in the presence of light.

Claim 7. (Amended) The DNA fragment of claim 1 or 2 wherein the promoter which is operatively linked to the gene to be expressed is a constitutive promoter linked downstream of said DNA fragment.

Claim 8. (Amended) The promoter of claim 4 or 5 having a constitutive expression promoter linked downstream of said promoter but upstream of said gene to be expressed.

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*C2*  
Claim 11. (Amended) An expression cassette comprising the gene to be expressed linked downstream of the isolated DNA fragment or promoter of any one of claims 1 to 6, 9 and 10, whereby expression of said gene is repressed in the presence of light compared with the expression in the dark.

Claim 12. (Amended) A plant cell transformed with the expression cassette of claim 11, 14 or 15.

Claim 13. (Amended) A plant transformed with the DNA fragment of claim 11, 14 or 15 or a progeny of the plant, and an organ part of said plant or progeny.

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Please add new claims 14 and 15, as follows:

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--Claim 14. An expression cassette comprising the gene to be expressed linked downstream of the isolated DNA fragment of claim 7, whereby expression of said gene is repressed by light compared with the expression in the dark.

Claim 15. An expression cassette comprising the gene to be expressed linked downstream of the isolated promoter of claim 8, whereby expression of said gene is repressed by light compared with the expression in the dark.--

#### REMARKS

Reconsideration and allowance of the present application are respectfully requested.

Claims 1-8 and 11-12 stand rejected under 35 USC 101, because the Examiner finds the claims to be directed to non-statutory subject matter. The claims have been amended as shown above to recite an isolated DNA fragment and promoter, as suggested by the Examiner. The dependent claims that recite an expression cassette have been amended to explicitly recite the respective isolated DNA fragment and/or promoter. Accordingly, the applicants submit that all presently considered claims are fully allowable under Section 101.

Claims 1-13 stand rejected under 35 USC 112, second paragraph because the Examiner finds the claims to be indefinite for the reasons stated at pages 3-5.